

OU-1  
OU-2

William Hatfield

06/17/2003 05:57

To: "Bergere, Timothy" <tbergere@mmwr.com>  
cc: Sandy Purrington/PHKS@PHKS  
Subject: Re: Boarhead Farms

Tim:

In follow up to our recent conference call and your 6/16/03 email information request, we are preparing to send you the documents related to the Boarhead Group and trust account matters. You should be receiving the information from us by mail later this week.

Here is an initial response to your email inquiry:

1) There is an "Agreement in Principle" that 6 of the current OU-1 Group members executed back in July 1999 concerning the Boarhead matter. At that time, Bundy was not a Group member. We are forwarding you a copy of that Agreement.

There is a General PRP Group Organization Agreement (for OU-1) that was circulated among the Group for execution in or about September 2000. We are forwarding you a copy of the OU-1 PRP Group Agreement along with available execution pages from the OU-1 Group members.

There is a Environmental Remediation Trust (ERT) Agreement for OU-1 that was circulated to the Group for execution in January 2002. The named Trustee was David Payne - Pitney Hardin Kipp & Szuch LLP. We are forwarding you the ERT Agreement with available signature pages from the OU-1 Group members.

After David Payne took leave of the firm in late 2002, I continued to serve in his capacity as Trustee of the Boarhead ERT on behalf of the firm.

Under the ERT Agreement, I suggest that we invoke/cite the appropriate provisions to transfer the Boarhead Trust between our firms. We also should obtain the Group's prior written consent to transfer the trust funds and to change Trustees.

2) Based on a review of the file, I do not believe that there is a formal trust agreement for OU-2. There was a draft OU-2 PRP Group Organizational Agreement that was prepared in 2002 that was never finalized. We can provide you with a draft copy of that agreement if you wish.

The OU-2 Group trust funds have been maintained in a separate sub trust account related to the Boarhead matter and handled according to instructions from the OU-2 Group members since January 3, 2002.

3) We are ready to transfer the OU-2 RD/RA trust account funds to you at your convenience. We intend to transfer the OU-1 RD/RA funds by the end of the month. We need to ensure that the last check cleared that account before we transfer it to you.

As discussed, there is very little money in the EPA reimbursement accounts (OU-1 and OU-2) and the Barkett account (for a future allocation). We can also transfer those accounts to you at your convenience.

As agreed, we will retain the monies in the Group defense cost accounts (OU-1 and OU-2) until all of our outstanding fees are paid. When that is complete, we will transfer any remaining funds to your firm.

Please forward us the wire transfer instructions for the 5 Boarhead trust sub accounts (excluding the OU-1 and OU-2 defense cost accounts). I will work with Sandy to ensure that the funds are transferred in an orderly fashion.

PHKS 073639

4) We confirm that, on April 5, 2002, the Group paid the remaining \$10K in dispute with EPA related to the OU-1 reimbursement.

5) I do not believe that any of the Boarhead trust accounts were interest bearing - rather it appears that all of the accounts were non-interest bearing.

If you need any further information, please let me know.

Regards,

WSH

"Bergere, Timothy" <tbergere@mmwr.com> on 06/16/2003 03:02:49 PM



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To: "whatfield@pitneyhardin.com" <whatfield@pitneyhardin.com>  
cc:  
Subject: Boarhead Farms

Bill:

Some transitional questions I would like to get squared away prior to my inaugural conference call with the OU-2 Group.

1. Was the Trust Agreement for creation of the OU-1 Trust ever authorized and, if so, who is the current Trustee?
2. Was there ever a second Trust established for the OU-2 Group? If no, why not?
3. Are you all ready to transfer the funds? I can send wire transfer instructions as soon as you are ready to go.
4. Did the Group ever pay the \$10K remainder from the \$17K dispute it had with EPA over an OU-1 response cost bill? Was that 10K paid?
5. Were all of Pitney's accounts here managed as interest bearing accounts owned by the Trust?

I would appreciate any help you can provide, thanks.

Tim Bergere

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